

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

In the matter of

XXXXX

Petitioner

File No. 88428-001-SF

v

Blue Cross and Blue Shield of Michigan  
Respondent

/

**Issued and entered  
this 29th day of April 2008  
by Ken Ross  
Commissioner**

**ORDER**

**I  
PROCEDURAL BACKGROUND**

On March 11, 2008, XXXXX, authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006 (Act 495), MCL 550.1951 *et seq.* The Commissioner reviewed the request and accepted it for external review on March 18, 2008.

Under Section 2(2) of Act 495, MCL 550.1952(2), the Commissioner conducts this external review as though the Petitioner was a covered person under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Commissioner notified Blue Cross and Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on March 26, 2008.

The Petitioner is enrolled for health coverage through the XXXXX Public Schools, a self-funded group. BCBSM administers the plan. The issue in this external review can be decided by a

contractual analysis. The contract involved here is the Master Medical Supplemental Benefit Certificate Catastrophic Coverage Plan, Option 3 (Certificate). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

## **II FACTUAL BACKGROUND**

On September 14, 2007, the Petitioner purchased the Reid Sleeve Device, a durable medical equipment (DME) item from XXXXX in XXXXX at a cost of \$4,069.65. BCBSM paid \$1,360.00 to the Petitioner for the Reid Sleeve Device.

The Petitioner appealed BCBSM's payment amount. BCBSM held a managerial-level conference on February 27, 2008, and issued a final adverse determination dated March 3, 2008.

## **III ISSUE**

Is BCBSM required to pay an additional amount for the Petitioner's Reid Sleeve Device?

## **IV ANALYSIS**

### **Petitioner's Argument**

The Petitioner states that she was told prior to ordering the Reid Sleeve that BCBSM would pay the total cost of this device. The facility that provided this device had called BCBSM and confirmed this.

BCBSM paid only \$1,360.00 of the \$4,069.65 for the Petitioner's Reid Sleeve. This leaves her with a balance of \$2,709.65 that she cannot afford to pay. She asks that BCBSM be required to pay the full amount charged for this device.

### **BCBSM's Argument**

BCBSM says that the Certificate clearly states that in many cases it pays for the same durable medical equipment (DME) items covered by Medicare, Part B. In some cases however, BCBSM guidelines may differ.

BCBSM's DME consultant indicated that under Medicare DME policy, compression devices described by procedure code A4465 (Reid Sleeve, Circ Aid, etc.) are noncovered items. However, since 2007 BCBSM does review these items on an individual case by case basis. BCBSM's DME consultant concluded that the Petitioner's Reid Sleeve should be approved at the maximum amount of \$1,700.00. This is based on examining the cost of several types of compression garments and allowing for the least costly alternative of these devices.

Section 2 of the certificate, "What You Must Pay" indicates that for "Additional Benefits" a 20% copayment is applied to the approved amount. Since DME is included in Additional Benefits BCBSM applied a 20% copayment to the \$1,700 approved amount for the Reid Sleeve and paid the Petitioner \$1,360.00. BCBSM argues that this is the proper amount to be paid for this device and is not required to pay any additional amount.

The Petitioner indicated that when she called BCBSM she was told that her Reid Sleeve would be paid for in full. BCBSM says it reviewed the documentation from the telephone conversations the Petitioner had with customer service and the record from these calls did not indicate that BCBSM would cover her Reid Sleeve at 100%. BCBSM argues it did not mislead the Petitioner and is not required to pay any additional amount for this device.

#### Commissioner's Review

The Certificate, on page 3.12, describes how benefits are paid: "In many instances we cover the same items covered by Medicare part B. . . . In some instances however, BCBSM guidelines may differ." In this case, the Reid Sleeve is not a covered benefit under Medicare. However, BCBSM will cover this device after a medical review. BCBSM's DME consultant approved the Reid Sleeve for the Petitioner and set an approved amount of \$1,700.00 based on the approved amount

of similar items. After applying the 20% copayment provided for in the certificate BCBSM paid \$1,360.00 to the Petitioner.

Petitioner's DME coverage is provided under her Master Medical certificate. With master medical coverage, BCBSM makes its benefit payment to the subscriber. The provider is not obligated to accept BCBSM's payment as payment in full and therefore may bill the subscriber for the covered amount as well as any additional balance the provider may charge to cover the full amount of its charge.

The Petitioner contends that BCBSM misinformed her about the amount it would pay for her Reid Sleeve. BCBSM disputed the Petitioner's contention and does not believe it misinformed her. However, the Commissioner cannot resolve this kind of dispute because the Patient's Right to Independent Review Act (PRIRA) lacks the hearing procedures necessary to make findings of fact based on witness testimony. Under PRIRA, the Commissioner's role is limited to determining whether a health plan has properly administered health benefit claims under Michigan law and the terms and conditions of the applicable insurance contract.

The Commissioner finds that BCBSM paid the amount required under the provisions of the Certificate for the Petitioner's Reid Sleeve and is not required to pay any additional amount.

## **V ORDER**

BCBSM's final adverse determination of March 3, 2008, is upheld. BCBSM is not required to pay an additional amount for the Petitioner's Reid Sleeve.

This is a final decision of an administrative agency. A person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. See MCL 550.1915(1), made applicable by MCL 550.1952(2).

A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.